

18:00 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

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UNITED STATES OF AMERICA (NUMBER 3: 04-240-G

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VERSUS

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HOLY LAND FOUNDATION, ET AL. (October 22, 2007

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18:00 9

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VOLUME 33

12

TRANSCRIPT OF TRIAL

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BEFORE THE HONORABLE A. JOE FISH

14

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A P P E A R A N C E S:

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MR. NATHAN GARRETT
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18:00 1 Court Reporter: Cassidi L. Casey, CSR No. 1703
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18:00 1

P R O C E E D I N G S :

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THE COURT: Before we start, let me put this on the record that what we're meeting about is a note I saw for the first time this morning. Evidently, it was delivered before my arrival at the courthouse my Ms. Kristina Williams.

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"Judge Fish, I am writing you to ask you some questions. One, are we going to be polled.

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"Two, does undecided mean not guilty? If we are not going to be polled, I would like to give my statement with the court reporter there on some of the charges with the defendants. Will you please let me know? Thank you, Kristina Williams, Number 7(sic)."

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18:00 15

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MR. WESTFALL: I have not discussed this with the government, but we would suggest a very simple answer to at least the not guilty question: Undecided does not mean not guilty. And then on the issue of polled, you know, poll, obviously is provided for. It's possible. It just seems like particularly that last paragraph there is a chance that something could go haywire unless her concerns are kind of addressed.

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THE COURT: Counsel for the government have a view?

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MR. JACKS: Judge, I believe I agree with Mr. Westfall in terms of how these questions could be

18:00 1 answered. I think also in addition one of the reasons
2 that we sought to have this meeting with the Court is that
3 there is still this note from Thursday, and just for
4 clarification, as far as how the Court intended to
5 proceed. I don't know if there is anymore to discuss with
6 regard to that.

7 THE COURT: Well, actually there were two notes
8 Thursday that I found. It had been reported to me by
9 telephone by Judge Stickney that there was one note, but
10 actually there were two notes. So which one are you
11 referring to?

12 MR. JACKS: The first one that talks about their
13 decisions and breaks it down by defendant. So I guess we
14 were just kind of wanting clarification as to how the
18:00 15 Court intended or wanted to proceed. Obviously, it's a
16 partial verdict. Before going into the courtroom, we were
17 looking for any kind of guidance as far as how it wanted
18 to proceed.

19 THE COURT: Well, what I was planning to do
20 based on my knowledge of what occurred in my absence last
21 week is to bring the jury into court, read these two notes
22 into the record which were sealed by Judge Stickney I
23 understand last week and to say that it was my
24 understanding that the jury had reached a decision on at
25 least some counts of the indictment and to ask for

18:00 1 affirmation of that from the foreperson and then to say
2 that the partial verdict was received by Judge Stickney
3 and placed under seal last week -- which I have not
4 opened. It's in this envelope here. So I don't know what
5 to expect when I open the envelope. But to open it and
6 publish whatever verdict they have reached. And my
7 ordinary practice is to poll the jury on my own motion
8 after that. I don't know what we will get in light of Ms.
9 Williams's note after we do that, but that's my normal
10 practice.

11 MR. JACKS: Well, your Honor, does the Court
12 intend to answer that note before doing that?

13 THE COURT: The note you are referring to?

14 MR. JACKS: The note from today, from Ms.
18:00 15 Williams.

16 THE COURT: Well, I can if you want me to. I'm
17 not sure how you want me to do that, whether to bring her
18 back from the juryroom into my office or talk to her
19 individually or send her a note directed to her or what.
20 This is so irregular to have a note other than the
21 foreperson, I'm not sure of the proper procedure.

22 MR. WESTFALL: The entire panel I suppose could
23 be told what the effect of an undecided verdict is; it's
24 not "not guilty." And then you can tell them your regular
25 practice in terms of being polled. That might take care

18:00 1 of it.

2 THE COURT: What would be the preamble to my
3 telling them that? Do you think I should read the note
4 to the jury?

5 MS. CADDEDU: I don't see that you need to read
6 the notes.

7 MR. WESTFALL: In the record before the verdict
8 is read, it might create chaos because you can unseal it
9 after the verdict.

10 MS. HOLLANDER: There were other notes that I
11 thought your Honor was going to unseal, all of them after
12 the verdict. What if you just sent a note back?

13 THE COURT: One reason I was thinking about
14 publishing these notes which have been under seal is to
18:00 15 explain to the press and any members of the public who
16 were here why we were receiving a partial verdict because
17 the jury does say in one of these notes that they don't
18 think further deliberations would be productive.

19 MR. JACKS: Judge, I would propose that you just
20 answer this note from today from Ms. Williams in writing
21 and address it to the jury as a whole saying one of your
22 number has asked the following questions and these are the
23 answers to those questions.

24 Partly, rather than bringing them in -- bringing
25 them in and doing it in open court. It gives some privacy

18:00 1 to Ms. Williams that might be appropriate. But then the
2 question becomes okay after you answer that, what affect
3 does that have? Does it change her vote? Where do we go
4 from there? I guess.

5 MS. HOLLANDER: We find out when we poll them.
6 If the Judge were to answer the question, "No, undecided
7 does not mean not guilty, and yes, you will be polled,"
8 then I guess we find out when they are polled.

9 MR. JACKS: And listen to her prepared
10 statement.

11 THE COURT: If I answer in writing to this note
12 from Ms. Williams, as you suggest, that's going to require
13 some delay. I see it's ten o'clock now when everybody was
14 supposed to be here, and Ms. Piwoni, my assistant, is on
18:00 15 leave this week, and so I have to find somebody to type a
16 response to this. I want to advise you of that.

17 MR. WESTFALL: Couldn't they just be told as a
18 group, your Honor?

19 THE COURT: That's fine with me. I'm willing to
20 be guided by your thoughts on that.

21 MR. WESTFALL: You said your normal practice is
22 to poll the jury. That would answer what seems to be her
23 biggest question, and to the extent there are undecided
24 counts, the effect of that I think could be easily
25 explained.

18:00 1 MS. HOLLANDER: That might be easier, especially
2 since we don't have to wait for a typist.

3 MR. GARRETT: So yes, you will be polled, and
4 the second one, yes, undecided does not mean not guilty.

5 MS. MORENO: And get out of the room, Judge.

6 THE COURT: Good advice.

7 (Jury in)

8 THE COURT: Good morning, Ladies and Gentlemen.
9 Welcome back to the courtroom. It's been a while since we
10 have all been together. For the parties and the jury,
11 they are aware I think that I was out of town last week.
12 The members of the public who are here or members of the
13 press may not be aware of that fact. I wanted to review
14 what I understand happened last week in my absence under
18:00 15 the supervision of Magistrate Judge Stickney of our Court.
16 On Thursday of last week which was the 18th of October, we
17 received two notes from the jury. The first says
18 "10-18-07, Concerning the verdict forms, we have two
19 defendants on whom we have reached unanimous decisions on
20 some of the counts. Do I sign and date even though all
21 counts are not decided?"

22 And then someone has written in -- I'm not sure
23 who -- the word "yes" below that. It seems to be a
24 different handwriting than the question. And then below
25 that, "Do I sign the verdict forms where no unanimous

18:00 1 decisions were reached?"

2 And then again the word "yes" is written in,
3 although it seems to be in a different hand, and the note
4 is signed by the foreperson.

5 And then the second note is also dated 10-18-07.
6 It reads "After extensive deliberation, review of the
7 admitted exhibits and consultation of the Court's
8 instructions to the jury, we, the jury, have reached the
9 following decisions:

10 "Unanimous decisions on all counts on one
11 defendant. Unanimous decisions on some of the counts on
12 two defendants. We are unable to reach unanimous
13 decisions on any of the counts on the three remaining
14 defendants. We do not believe that any further
18:00 15 deliberations would lead to any further unanimous
16 decisions on any of the undecided counts on any of the
17 defendants." This note is also signed by the
18 foreperson.

19 And then I have an envelope which was signed and
20 sealed by Judge Stickney which apparently contains the
21 partial verdicts referred to in the notes. Also, this
22 morning, I received a note from a member of the jury which
23 I will read in part. It's dated 10-22-07. It says,
24 "Judge Fish, I am writing you to ask you some questions.
25 One, are we going to be polled? Two, does undecided mean

18:00 1 not guilty?"

2 The answers to those questions are, yes, you
3 will be polled after I have published the jury's partial
4 verdict, and the second question "does undecided mean not
5 guilty," the answer to that is undecided does not mean not
6 guilty.

7 With that background, I am going to open the
8 envelope that Judge Stickney sealed last week containing
9 the partial verdict that was referred to in these notes.

10 The first set of pages here is the verdict form
11 relating to the Defendant Holy Land Foundation for Relief
12 and Development, and it is signed by the foreperson, but
13 no verdicts are recorded in any of the spaces.

14 The second set of papers is the verdict form for
18:00 15 the Defendant Shukri Abu Baker, and again it is signed by
16 the foreperson, but there are no entries in any of the
17 blanks.

18 The next set of papers is the verdict form for
19 the Defendant El Mezain, and there is no entry for him on
20 Count 1 of the indictment. However, as to Count 2 of the
21 indictment, the foreperson has recorded that the verdict
22 of the jury is not guilty.

23 On Count 3 of the indictment, similarly the
24 foreperson has recorded a not guilty verdict.

25 On Count 4 of the indictment, the foreperson has

18:00 1 recorded a not guilty verdict.

2 On Count 5 of the indictment, the foreperson has
3 recorded a not guilty verdict.

4 On Count 6, the foreperson has recorded a not
5 guilty verdict.

6 On Count 7 of the indictment, the foreperson has
7 recorded a not guilty verdict.

8 On Count 8, the foreperson has recorded a not
9 guilty verdict.

10 On Count 9, the foreperson has recorded a not
11 guilty verdict.

12 On Count 10, the foreperson has recorded a not
13 guilty verdict.

14 On Count 11, the foreperson has recorded a not
18:00 15 guilty verdict.

16 On Count 12, the foreperson has recorded a not
17 guilty verdict.

18 On Count 13, the foreperson has recorded a not
19 guilty verdict.

20 On Count 14, the foreperson has recorded a not
21 guilty verdict.

22 On Count 15, the foreperson has recorded a not
23 guilty verdict.

24 On Count 16, the foreperson has recorded a not
25 guilty verdict.

18:00 1 On Count 17 the foreperson has recorded a not
2 guilty verdict.

3 On Count 18, the foreperson has recorded a not
4 guilty verdict.

5 On Count 19, the foreperson has recorded a not
6 guilty verdict.

7 In Count 20, the foreperson has recorded a not
8 guilty verdict.

9 On Count 21, the foreperson has recorded a not
10 guilty verdict.

11 On Count 22, the foreperson has recorded a not
12 guilty verdict.

13 On Count 23, the foreperson has recorded a not
14 guilty verdict.

18:00 15 On Count 24, the foreperson has recorded a not
16 guilty verdict.

17 On Count 25, the foreperson has recorded a not
18 guilty verdict.

19 On Count 26, the foreperson has recorded a not
20 guilty verdict.

21 On Count 27, the foreperson has recorded a not
22 guilty verdict.

23 On Count 28, the foreperson has recorded a not
24 guilty verdict.

25 On Count 29, the foreperson has recorded a not

18:00 1 guilty verdict.

2 On Count 30, the foreperson has recorded a not
3 guilty verdict.

4 And on Count 31, the foreperson has recorded a
5 not guilty verdict.

6 And on Count 32, the foreperson has recorded a
7 not guilty verdict.

8 The verdict form on Mr. El Mezain is dated
9 September 18, 2007 (sic) and signed by the foreperson.

10 The next set of papers is the verdict form for
11 the Defendant Ghassan Elashi, and although it is signed by
12 the foreperson and dated September 18 (sic) there are no
13 entries in any of the blanks.

14 The next set of papers is the verdict form for
18:00 15 the Defendant Mufid Abdulqader. The foreperson has
16 recorded a not guilty verdict as to Mr. Mufid Abdulqader
17 on Counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14,
18 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28,
19 29, 30, 31 and 32 of the indictment. And the verdict form
20 is signed by the foreperson and dated October 1st, 2007.

21 The next set of papers is the verdict form for
22 the Defendant AbdulRahmin Odeh. It is signed by the
23 foreperson and dated September 18, 2007, although I wonder
24 if that should be October 18. And the foreperson has
25 recorded a not guilty verdict on Count 2. There is no

18:00 1 entry for Count 1. The foreperson has recorded a not
2 guilty verdict for Counts 3, 4, 5, 6, 7, 8, 9, 10. There
3 is no entry for Count 11. The foreperson has recorded a
4 not guilty verdict for Counts 12, 13, 14, 15, 16, 17, 18,
5 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, and 32.

6 Now, Ladies and Gentlemen of the Jury, as I told
7 you in response to the note I received this morning from a
8 member of the jury, it is my intention to poll each of you
9 to tell me if what I have just read constitutes your
10 verdict. I will begin -- And I am going to only address
11 you as Juror Number such and such in an effort to protect
12 your anonymity since there has been some media interest.
13 Madam Foreperson, is this your verdict?

14 FOREPERSON: Yes.

18:00 15 THE COURT: Juror Number 2, is this your
16 verdict?

17 JUROR NUMBER 2: No.

18 THE COURT: Juror Number 3, is this your
19 verdict?

20 JUROR NUMBER 3: Yes.

21 THE COURT: Juror Number 4, this your verdict?

22 JUROR NUMBER 4: Yes.

23 THE COURT: Juror Number 5?

24 JUROR NUMBER 5: Yes.

25 THE COURT: Juror Number 6?

18:00 1 JUROR NUMBER 6: No.

2 THE COURT: Juror Number 7, is this your

3 verdict?

4 JUROR NUMBER 7: Yes.

5 THE COURT: Juror Number 8, is this your

6 verdict?

7 JUROR NUMBER 8: Yes.

8 THE COURT: Juror Number 9, is this your

9 verdict?

10 JUROR NUMBER 9: Yes.

11 THE COURT: Juror Number 10, is this your

12 verdict?

13 JUROR NUMBER 10: No.

14 THE COURT: Juror Number 11, is this your

18:00 15 verdict?

16 JUROR NUMBER 11: Yes.

17 THE COURT: Juror Number 12, is this your

18 verdict?

19 JUROR NUMBER 12: Yes.

20 THE COURT: Ladies and Gentlemen, as I told you

21 in my initial instructions, your verdict must be

22 unanimous, and it is apparent to me from the answers of

23 three members of the jury in response to the question that

24 the verdicts that I read earlier do not represent the

25 unanimous view of the juror. So I guess I need to

18:00 1 inquire, Madam Foreperson, whether there is the
2 possibility that further deliberations might produce a
3 unanimous decision on any of these counts.

4 FOREPERSON: Your Honor, when we voted, there
5 was no issue in the vote, and no one spoke up any
6 differently throughout this whole process. Now, when we
7 spoke up, we deliberated. There was arguments, and we
8 went through everything that we thought we needed to do.
9 At that certain point when the vote was done, there was no
10 speaking up saying any differently. So I'm not
11 understanding -- I don't understand where it's coming
12 from, and I'm not sure about the further deliberations
13 because that two -- All twelve made that decision that we
14 were at the end of the deliberations.

18:00 15 THE COURT: Well, let me ask you to do this.
16 Let me ask you to retire to the juryroom to discuss this
17 matter to see whether the jury believes that further
18 deliberations might be productive in reaching a further
19 decision. And once you have talked about that, I'll ask
20 you to send me a note reflecting what your consensus on
21 that is, and we'll wait for your decision.

22 (Jury out)

23 THE COURT: Ladies and Gentlemen, we'll be in
24 recess while the jury caucuses on this matter about
25 whether further deliberation might be productive, and once

18:00 1 I hear from them, I'll communicate with counsel for the
2 parties.

3 THE COURT: I have just been handed a note by
4 Mr. Kiblinger. I'll read it. "10-22-07, "Eleven out of
5 twelve jurors have agreed that further deliberations will
6 not change the results." Signed by Ms. Lopez-Rogina as
7 foreperson. If you would like, I will make copies of this
8 and make them available.

9 MR. DRATEL: Your Honor, that note, I'm not sure
10 what it means. But it occurred to us -- thinking about
11 what occurred in the courtroom -- that there is a
12 possibility that because of perhaps the way the jurors
13 misperceived the question on polling that they may have
14 been talking about undecided counts as to whether this is
18:00 15 their verdict because they obviously disagreed on
16 undecided counts, and the verdict for not guilty would
17 say, no, that's not my vote if they had voted on decided
18 counts. We don't know whether the unanimous counts are in
19 contest or it's the undecided counts. This note doesn't
20 tell us that answer. It could be that eleven of twelve
21 would say we can reach on the others, but I'm not going
22 further. I'm where I am, but not further on the undecided
23 counts. We don't know the answer to that question. So I
24 don't know whether that applies to the entirety of the
25 verdicts or just the counts that they couldn't reach

18:00 1 verdicts on. I think further exploration would assist us
2 perhaps in getting some closure in this case. Perhaps
3 also polling on each defendant might work to that effect
4 as well. They may not be in dispute about Mr. Abdulqader.

5 MR. JACKS: Well, your Honor, that's just
6 speculation, and I don't think we can sit here and try to
7 figure out what they meant. You've got three of the
8 twelve that said it's not their verdict, and to sit there
9 and try to decipher what they meant by that, I don't
10 really think that if the answer doesn't come back the way
11 somebody expected it -- You almost are going to end up
12 having a dialogue with them trying to figure out what they
13 are thinking. And even at that, now it says that eleven
14 out of twelve don't think any further deliberations would
18:00 15 be of benefit. I just think that a mistrial is
16 inevitable, and I don't know that you could ever unravel
17 this thing where it makes sense.

18 MR. DRATEL: Back to the notes. On the
19 undecided counts or decided counts, if it's only undecided
20 we have a verdict that has integrity. If it's undecided,
21 we have an issue. And as to the defendants, what if they
22 are undecided on a question as to Mr. El Mezain but they
23 are as to Mr. Mufid Abdulqader? He's already acquitted --

24 MS. CADDEDU: Your Honor, I would make a
25 specific request to poll jurors as to my client. I think

18:00 1 clearly he has the most to lose from mistrying his case,
2 and I think that at least is warranted based on the facts.

3 THE COURT: Well, it seems to me that the
4 polling of the jury did probably produce an ambiguous
5 result, and that's really a separate question in my mind
6 from whether further deliberations would be productive,
7 and I think the overwhelming indication there is that
8 further deliberation would not be productive which is my
9 sense, too. I have given the jury an Allen charge two
10 weeks ago, and to do it again, I think would probably be
11 futile. I don't know that I need the necessity of polling
12 the jury with respect to all of the defendants because
13 there were some as to whom there were no answers recorded.
14 I think that seems to be fairly clear to me. But as to
18:00 15 the ones that some verdicts were recorded, I think it
16 might be worthwhile to go back through and just clarify
17 with the jury whether their answers meant what I initially
18 thought, whether everybody agreed with those or maybe they
19 were referring to the undecided counts when they said this
20 was not their verdict.

21 MR. DRATEL: I think we all agree, as we did on
22 Thursday, that we don't think further deliberation is
23 fruitful. We just want to see whether we have an actual
24 verdict as to some of the defendants.

25 MS. HOLLANDER: The way your Honor seeks to

18:00 1 proceed from my prospective makes sense.

2 THE COURT: Well, to spell it out again, to be
3 sure there was no misunderstanding as to those defendants
4 from whom we received some verdicts, I will poll the jury
5 individually about those. As to others for who there were
6 no verdicts recorded, I'm not going to question them about
7 those.

8 MR. CLINE: Does your Honor intend to declare a
9 mistrial as to those three defendants?

10 THE COURT: I think that is the only choice I
11 have.

12 MR. CLINE: We agree. I wanted to be clear.

13 MR. JACKS: Your Honor, will you do it count by
14 count, as to Count 2 for Mr. El Mezain or will you do it
18:00 15 in groups or do you know?

16 THE COURT: I guess I hadn't gotten that far in
17 my thinking. The easiest I guess as to Ms. Cadeddu's
18 client since he had a verdict recorded on all counts, and
19 as to the others I hadn't really thought about that.

20 MR. JACKS: Thank you, your Honor.

21 (Jury in)

22 THE COURT: I'm sorry for the false start,
23 Ladies and Gentlemen. But Ms. Casey told me that counsel
24 for the government wanted to put something on the record.

25 MR. JACKS: Your Honor, as we were filing out

18:00 1 about two minutes ago, we learned from Ms. Casey that on
2 Thursday after the verdict came out that Ms. Williams,
3 Juror 7 I believe -- I'm not sure if I have the number
4 correct -- approached Magistrate Stickney and informed him
5 this is not her verdict, that she felt pressure. I think
6 when you take that statement in conjunction with our note
7 this morning, in conjunction with what Mr. Holmes said
8 about Juror William Neal, I think, your Honor -- I think
9 you need to speak to Ms. Williams yourself and find out if
10 she feels pressured. Maybe away from the jury she can
11 give you an honest answer.

12 THE COURT: I'm not really inclined to do that.
13 What we have said is consistent with my understanding of
14 the conversation I had with Judge Stickney on Thursday
18:00 15 afternoon. He told me at that time as best I can
16 remember -- I don't know if he identified Ms. Williams to
17 me by name but that a female member of the jury was almost
18 in tears or was in tears and very emotional and asked if
19 the jury would be polled, and he told her yes, and either
20 he inferred or she said that she was under pressure from
21 other jurors, but I don't think I knew until this morning
22 that was Ms. Williams.

23 MR. WESTFALL: I don't know if the Court noticed
24 she was crying just now.

25 THE COURT: But I think that's inherent in this

18:00 1 process, that people are always under some peer pressure
2 to reach a result, and so I don't know that I see it being
3 productive to interview her or any other member of the
4 jury individually.

5 MR. DRATEL: Thank you, your Honor.

6 (Jury in)

7 THE COURT: Good morning, Ladies and Gentlemen.
8 After the last recess, I received a few minutes ago
9 another note from the jury foreperson which reads as
10 follows: "10-22-07, Eleven out of twelve jurors have
11 agreed that further deliberations will not change the
12 results." And that note is signed by the foreperson. I
13 think that I must necessarily accept the judgment of that
14 number of jurors that further deliberations would not be
18:00 15 productive. However, before moving on, I would like to go
16 back to the poll that I did of the jury this morning
17 because I was afraid on reflection that may be there was
18 some ambiguity in the question when I asked each member of
19 the jury to tell me whether or not the results recorded by
20 the foreperson represented their verdict. Obviously,
21 there was some disagreement among the jury on some of
22 these counts where no answer was recorded. I think that's
23 reasonably clear. But on some of the defendants there
24 were answers recorded, and I would like to go back to that
25 part of our proceedings in the poll this morning. For

18:00 1 example, as to the Defendant Mufid Abdulqader, the
2 foreperson recorded a not guilty verdict for Mr. Mufid
3 Abdulqader on all counts in which he was accused in the
4 superseding indictment. So I would like to focus on Mr.
5 Mufid Abdulqader for just a moment and ask the three
6 members of the jury who told me this morning that this
7 does not represent their verdict -- I'd like to ask that
8 question again, but before I do, let me say that I am not
9 seeking to get you to change your answer, if that's not
10 appropriate. I'm really only trying to understand your
11 answer and see whether you meant that the verdicts that
12 were recorded on these defendants, where there were
13 verdicts, that that didn't represent your opinion or
14 whether you were referring to many of the counts in the
18:00 15 indictment against some defendants were not answered at
16 all and whether you were in disagreement with that. So
17 I'm trying to understand your answer. I'm not necessarily
18 seeking a different answer.

19 Juror Number 2, you told me no this morning. Do
20 you disagree with the verdicts of not guilty respecting
21 Mr. Mufid Abdulqader?

22 JUROR NUMBER 2: I agree with it.

23 THE COURT: Juror Number 6, do you disagree with
24 the verdict regarding Mr. Mufid Abdulqader?

25 JUROR NUMBER 6: I don't agree with the verdicts

18:00 1 that are on that paper.

2 THE COURT: And Juror Number 10, do you disagree
3 with the verdicts recorded?

4 JUROR NUMBER 10: I agree with them.

5 THE COURT: There were also partial verdicts
6 rendered against some other defendants. Mr. Odeh.

7 Juror Number 2, do you disagree with the
8 verdicts recorded on Mr. Odeh?

9 JUROR NUMBER 2: Yes, I do disagree with it.

10 THE COURT: And Juror Number 6, do you disagree
11 with the verdicts recorded on the form related to Mr.
12 Odeh?

13 JUROR NUMBER 6: Yes, I disagree with it.

14 JUROR NUMBER 10: I agree. I disagree on no
18:00 15 verdicts -- on not filling out verdicts on all. So you
16 don't have to ask me anymore questions about that.

17 THE COURT: And I believe there was one other
18 defendant on which we received a partial verdict, that
19 being Mr. El Mezain.

20 Juror Number 2, do you disagree with the
21 verdicts recorded on Mr. El Mezain?

22 JUROR NUMBER 2: No, I do not.

23 THE COURT: Juror 6, do you disagree with those
24 verdicts?

25 JUROR NUMBER 6: I do not disagree.

18:00 1 THE COURT: On Mr. El Mezain, Juror Number 10,
2 you said that you did not disagree with the verdicts?

3 JUROR NUMBER 10: I wanted it all verdicts.

4 THE COURT: Ladies and Gentlemen, as I said
5 earlier, I respect the judgment you have reached that
6 further deliberations will not produce unanimous
7 agreement, and so you are I think at the end of your
8 service in this case. It's been a while now since we had
9 closing arguments, but my memory is that counsel for all
10 the parties took the opportunity during that closing
11 argument to thank you for your service in this case, and I
12 would now like to take my opportunity to join them in
13 thanking you for your service. It's been a long trial. I
14 recognize there has been no doubt dislocation in every one
18:00 15 of your daily lives because of your service in this case.
16 You have rendered a valuable service to your community and
17 to your government by serving as jurors in this case.
18 This is one of the few ways these days that individuals
19 like yourselves can personally participate in the affairs
20 of your government, and I think you should be proud of the
21 service that you have rendered. I hope that we have made
22 you as comfortable as possible during your time with us
23 and that you have found this to be an educational
24 experience.

25 The local rules of our Court provide that the

18:00 1 parties to this case or the lawyers or other
2 representatives are not allowed to discuss this case with
3 you unless they have my permission to do so, and so you
4 should not discuss this case with any of those persons
5 unless you hear from me beforehand that it's okay.
6 Otherwise, it's up to you to decide now that your service
7 is over whether you want to discuss this case with anyone
8 and if so to what extent.

9 As I mentioned earlier this morning, there has
10 been media interest in this case which is probably not
11 surprising to you, and I have had some requests from
12 members of the media to have the opportunity to visit with
13 you about your service in this case. I have told them
14 that is all right with me, but it is up to you to decide
18:00 15 whether you want to visit with them or not. So I wanted
16 to tell you that the procedure I expect to follow is when
17 you leave the courthouse today you will be given a list of
18 the members of the media who have requested the
19 opportunity to visit with you, and it will have their
20 names and telephone numbers on there, and we will rely on
21 you to take the initiative if you want to visit with any
22 of them to make contact with them. I'm doing this in an
23 effort to preserve your privacy and anonymity if you want
24 that. However, if you want to speak to the media, you can
25 do so by making a telephone call and talking with them.

18:00 1 I think as we were coming in the courtroom I was
2 told by Mr. Kiblinger someone wanted to ask me a question.
3 So I said I would give --

4 MS. WILLIAMS: It was me. I wanted to know if
5 we have a question if we can ask while we're inside the
6 Court. But no, I don't have a question. It was just if I
7 had a question.

8 THE COURT: I would like to make the request
9 that once you leave the courtroom if you feel so disposed
10 to stay for a few minutes in the juryroom because I would
11 like to come back and visit informally with the jurors
12 about the case. On the other hand, if you don't want to
13 participate in that, I will certainly understand. You
14 have given us a lot of time already, and if you want to go
18:00 15 ahead and leave, I certainly understand your feelings.

16 Again, Ladies and Gentlemen, thank you for your
17 service, and you may be excused from the courtroom at this
18 pointed.

19 (Jury out)

20 THE COURT: Ladies and Gentlemen, I think the
21 law gives me no choice but to declare a mistrial on all of
22 the counts of the indictment on those defendants for whom
23 no valid verdict was reached in this case, and that will
24 be the Defendants Holy Land Foundation, Shukri Abu Baker,
25 Ghassan Elashi, Mufid Abdulqader and Abdulrahmin Odeh.

18:00 1 And then as to the Defendant Mohamed El Mezain,
2 I understood the three members of the jury this morning
3 that dissented from the verdict actually did not dissent
4 from the verdicts recorded on the verdict form relating to
5 Mr. El Mezain. Those were Counts 2 through 32 of the
6 indictment. So as to those counts of the indictment, I
7 will adjudge Mr. El Mezain not guilty in accordance with
8 the -- partial verdict of the jury and declare a mistrial
9 as to Mr. El Mezain on Count 1 of the indictment.

10 Given the fact that a mistrial has been declared
11 on most of the counts of the indictment against most of
12 the defendants, that leaves the case in the same posture
13 as it would be before this trial commenced. That is the
14 government has the option of bringing this prosecution
18:00 15 again.

16 Mr. Jacks, do you know whether the government
17 intends to bring these charges to another trial?

18 MR. JACKS: Yes, your Honor, my expectation is
19 that we will.

20 THE COURT: Well, for the benefit of the parties
21 and counsel -- and I may have told this to counsel
22 already, but I intend to send the case to random
23 reassignment among my colleagues if the case is to be
24 tried again. So it will be presided over by a different
25 judge the next time around. It has been my pleasure to

18:00 1 preside over this case, and I want to publically commend
2 counsel for the excellent jobs they have each done in
3 representing their respective clients.

4 It is ordinarily my practice when we receive a
5 verdict to order the court reporter to take custody of the
6 documentary and tangible exhibits which were received in
7 evidence if those documents are eight and a half by eleven
8 in size or smaller. However, if there is to be a retrial
9 in this case -- She tells me she does until there is a
10 transcript completed. So I will order that she take
11 custody of the exhibits and tangible exhibits at this
12 time. If there are documentary exhibits larger than eight
13 and a half by eleven in size, I will order those be
14 returned to custody of the counsel for the offering part
18:00 15 to be held pending further order of this Court.

16 Is there anything else that we need to talk
17 about while we're all together this morning?

18 MR. DRATEL: Your Honor, just a housekeeping in
19 terms of if we could maybe get an order on the record for
20 the Court permitting defendants to travel back to their
21 home residences.

22 THE COURT: I really would prefer to defer that
23 motion to Judge Stickney, who has handled the matters
24 relating to release pending trial. I don't necessarily
25 have any disagreement with that, but I'm more comfortable

18:00 1 having Judge Stickney handle it, given his familiarity
2 with the conditions of their release.

3 MR. JACKS: Your Honor, in that the bulk of
4 these charges are still unresolved, there is a question
5 regarding the Court's gag order, and if that I guess still
6 in place. I'm sure both sides have been bombarded with
7 questions and requests from the media, and I want to find
8 out what is the order of the Court.

9 THE COURT: Yes, my belief is that order is
10 still in effect and will be unless and until the
11 government decides not to prosecute this case further or
12 until these charges are resolved after another trial.

13 If there is nothing else, court will be in
14 recess at this time.

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C E R T I F I C A T I O N

I, Cassidi L. Casey, certify that during the proceedings of the foregoing-styled and -numbered cause, I was the official reporter and took in stenotypy such proceedings and have transcribed the same as shown by the above and foregoing Pages 1 through 32 and that said transcript is true and correct.

I further certify that the transcript fees and format comply with those prescribed by the court and the Judicial Conference of the United States.

CASSIDI L. CASEY
UNITED STATES DISTRICT REPORTER
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION